IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.10103/07

Man Singh Yadav
Vs
ADJ No.2 Jaipur City Jaipur and ors.

Date of order : 10/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Satish Bijarnia for the petitioner.

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Heard learned counsel for the petitioner.

This writ petition has been filed challenging the order dated 17.9.2007 whereby two objections were raised by the defendant-petitioner-non-applicant under Order 7 Rule 11 CPC with the prayer that the suit be rejected.

Learned counsel for the petitioner has argued that in the suit, prayer was made for setting aside the decree as

also the sale deed valuation of which was Rs.3,80,000/-. It was essentially a matter of conflict on the basis of which the court fee was required to be calculated. The learned trial court however rejected the application on the ground that this question could be decided by framing appropriate issue at the time of final disposal of the plaint.

Learned counsel referred to the provisions of clause(b) of Order 7 Rule 11 which inter alia provides that where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so, the plaint shall be rejected.

On perusal of the impugned order, it

is not evident that the Court has so far required the plaintiff to correct the valuation. The case of the petitioner was that the valuation of the sale deed was Rs.3,80,000/- and appropriate court fee has not been paid. The learned trial court in its order has held that this will be framed as an issue and can be tried at the time of final argument. Learned counsel submits that this issue goes to the root of the case and it shall be decided as a primary issue.

From the impugned order, it does not appear that any such prayer was made before the trial court. Learned counsel is not in a position to state whether or not the written statement has been filed. If and when the written statement is filed and such objection

is raised, the defendant petitioner would be free to again request the Court to try this issue as a preliminary issue.

I therefore do not see any reason to interfere in the impugned order.

The writ petition is dismissed though with the aforesaid observations.

(MOHAMMAD RAFIQ), J.

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